

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

10 CARLOS NOGUERA,)
11 Petitioner,) 3:11-cv-00428-LRH-RAM
12 vs.)
13 GREG SMITH, *et al.*,) ORDER
14 Respondents.)

15 Petitioner Carlos Noguera a prisoner at Nevada State Prison, has filed a *pro se* petition for writ
16 of habeas corpus pursuant to 28 U.S.C. § 2254. Petitioner has paid the filing fee for this action. (ECF
17 No. 4). The petition shall now be filed and served on respondents.

18 A petition for federal habeas corpus should include all claims for relief of which petitioner is
19 aware. If petitioner fails to include such a claim in his petition, he may be forever barred from seeking
20 federal habeas relief upon that claim. *See* 28 U.S.C. §2254(b) (successive petitions). If petitioner is
21 aware of any claim not included in his petition, he should notify the Court of that as soon as possible,
22 perhaps by means of a motion to amend his petition to add the claim.

23 Petitioner has also submitted a motion for appointment of counsel (ECF No. 1-2), arguing that
24 his long sentence and his inability to speak or understand the English language and the legal proceedings
25 supports appointment of counsel.

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1 There is no constitutional right to appointed counsel for a federal habeas corpus proceeding.
2 *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987); *Bonin v. Vasquez*, 999 F.2d 425, 428 (9th Cir. 1993).
3 The decision to appoint counsel is generally discretionary. *Chaney v. Lewis*, 801 F.2d 1191, 1196 (9th
4 Cir. 1986), *cert. denied*, 481 U.S. 1023 (1987); *Bashor v. Risley*, 730 F.2d 1228, 1234 (9th Cir.), *cert.*
5 *denied*, 469 U.S. 838 (1984). However, counsel must be appointed if the complexities of the case are
6 such that denial of counsel would amount to a denial of due process, and where the petitioner is a person
7 of such limited education as to be incapable of fairly presenting his claims. See *Chaney*, 801 F.2d at
8 1196; *see also Hawkins v. Bennett*, 423 F.2d 948 (8th Cir. 1970). The claims in this case are not
9 especially complex. Also, the Court notes from the petition, and from the other documents that
10 petitioner has submitted to the Court, that petitioner is able to present matters to the Court in an
11 organized and understandable manner. Petitioner's motion shall be denied.

12 **IT IS THEREFORE ORDERED** that the Clerk shall **FILE and ELECTRONICALLY**
13 **SERVE** the petition (ECF No. 1-1) and the motion for appointment of counsel (ECF No. 1-2) upon the
14 respondents.

15 **IT IS FURTHER ORDERED** that the motion for appointment of counsel is **DENIED**.

16 **IT IS FURTHER ORDERED** that respondents shall have **forty-five (45)** days from entry of
17 this order within which to answer, or otherwise respond to, the petition. In their answer or other
18 response, respondents shall address any claims presented by petitioner in his petition as well as any
19 claims presented by petitioner in any Statement of Additional Claims. Respondents shall raise all
20 potential affirmative defenses in the initial responsive pleading, including lack of exhaustion and
21 procedural default. **Successive motions to dismiss will not be entertained**. If an answer is filed,
22 respondents shall comply with the requirements of Rule 5 of the Rules Governing Proceedings in the
23 United States District Courts under 28 U.S.C. §2254. If an answer is filed, petitioner shall have **forty-**
24 **five (45) days** from the date of service of the answer to file a reply.

25 **IT IS FURTHER ORDERED** that, henceforth, petitioner shall serve upon the Attorney General
26 of the State of Nevada a copy of every pleading, motion, or other document he submits for consideration
27 by the Court. Petitioner shall include with the original paper submitted for filing a certificate stating the
28 date that a true and correct copy of the document was mailed to the Attorney General. The Court may

1 disregard any paper that does not include a certificate of service. After respondents appear in this action,
2 petitioner shall make such service upon the particular Deputy Attorney General assigned to the case.
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4 Dated this 19th day of July, 2011.



7 LARRY R. HICKS
8 UNITED STATES DISTRICT JUDGE
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